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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT TACOMA

10 JOHN WISE,

11                   Plaintiff,

12                   v.

13 WASHINGTON STATE DEPARTMENT OF  
14 CORRECTIONS, *et al.*,

15                   Defendants.

Case No. C05-5810 FDB/KLS

ORDER DENYING MOTION TO  
AMEND COMPLAINT

15                   This 42 U.S.C. § 1983 civil rights action has been referred to United States Magistrate Judge  
16 Karen L. Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the  
17 Court is Plaintiff's motion for leave to file an amended complaint. (Dkt. # 31). For the reasons  
18 stated below, the Court finds that the motion to amend should be denied.

19                   **I. FACTUAL AND PROCEDURAL BACKGROUND**

20                   Plaintiff filed this lawsuit on April 10, 2006. (Dkt. #15). Defendants answered on July 7,  
21 2006. (Dkt. # 29). Plaintiff alleges that his Eighth Amendment and First Amendment rights were  
22 violated because he claims the Defendants wrongfully denied him access to fresh/outdoor air and  
23 because his pre-stamped envelopes were taken. (Dkt. # 15). Plaintiff seeks declaratory and  
24 injunctive relief.

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26 ORDER - 1

1 Plaintiff alleges that his civil rights were violated when he was denied access to the outdoors  
 2 during his hour of “yard time” while he was housed in the Intensive Management Units (IMU) at the  
 3 Washington State Penitentiary (WSP) and Washington Corrections Center (WCC). (Id.) Plaintiff  
 4 now seeks to include new claims for the loss of yard for some infractions he received. (Dkt. # 31).  
 5 He also seeks to reaffirm that he has now completed the grievance process regarding the denial of his  
 6 mail. (Id.). Plaintiff has not provided the Court with a copy of his proposed amended complaint.  
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## II. DISCUSSION

8 Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 15(a), “[a] party may amend the  
 9 party’s pleading once as a matter of course at any time before a responsive pleading is served.”  
 10 Otherwise, the party “may amend the party’s pleading only by leave of court or by written consent of the  
 11 adverse party.” Id. Leave to amend “shall be freely given when justice so requires,” and “this policy is  
 12 to be applied with extreme liberality.” Id.; Morongo Band of Mission Indians v. Rose, 893 F.2d  
 13 1074, 1079 (9<sup>th</sup> Cir. 1990). After a responsive pleading has been filed, “leave to amend should be  
 14 granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is  
 15 futile, or creates undue delay.” Martinez v. Newport Beach City, 125 F.3d 777, 786 (9<sup>th</sup> Cir. 1997).

17 A proposed amendment that necessitates reopening discovery or that creates the need for  
 18 further discovery causes undue prejudice to the opposing party. Lockhead Martin Corp. v. Networth  
 19 Solutions, Inc., 194 F.3d 980, 986 (9<sup>th</sup> Cir. 1999). Leave to amend has also been denied when the  
 20 moving party knew or should have known the facts upon which the amendment is based when  
 21 drafting the original pleading, but did not include them in the original pleading. Jordan v. Los  
 22 Angeles, 669 F.2d 1311, 1324 (9th Cir. 1982), vacated on other grounds, 459 U.S. 810 (1982).

25 In this case, Plaintiff did not submit a proposed amended complaint. In his motion to amend,  
 26 ORDER - 2

1 Plaintiff requests leave to add “at least two” administratively exhausted claims for the loss of yard  
2 time and mail access, which he claims are further continuing evidence of constitutional violations  
3 justifying the injunctive relief he seeks. (Dkt. # 31, p 1-2). Defendant argues that Plaintiff’s motion  
4 to amend is futile as he seeks to amend his complaint to show that he completed the grievance  
5 process, even though he appears to have claimed this when he filed his original complaint. (Dkt. #  
6 39). Defendants also argue that the additions will likely be dismissed and that they are insufficient to  
7 supercede the original complaint as Plaintiff failed to make statements incorporating his prior  
8 complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).

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10 An amended complaint supersedes the original in its entirety, making the original as if it never  
11 existed. Id. The allegations contained in Plaintiff’s motion are not sufficient to properly plead an  
12 amended complaint to include all of Plaintiff’s factual and legal allegations. The Court finds that  
13 Plaintiff’s motion to amend should be denied as Plaintiff has failed to provide a proposed amended  
14 complaint to allow the Court to adequately determine what the Plaintiff wishes to add to his case.

15 Accordingly, Plaintiff’s motion to amend his complaint (Dkt. # 31) is **DENIED**.

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DATED this 13th day of December, 2006.

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Karen L. Strombom  
United States Magistrate Judge

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ORDER - 3